

ESTATE OF HENRY MAX BROUILLETTE

IBIA 75-62

Decided May 2, 1975

Petition to reopen.

Granted and remanded.

1. Indian Probate: Reopening: Waiver of Time Limitation

The Secretary is not bound by the limitations of 43 CFR 4.242 and he may at any time review and reopen estates on proper grounds.

APPEARANCES: Alaska Legal Services Corporation for Susan Brouillette, petitioner.

The above-entitled matter comes before this Board on a petition to reopen dated April 14, 1975, filed by Susan Brouillette through her attorneys, Alaska Legal Services Corporation. A copy of the petition is attached hereto.

[1] More than three years having elapsed since the Order To Determine Heirs was entered in the Estate of Henry Max Brouillette, deceased Thlingit Indian of Alaska, the Administrative Law Judge properly referred the petition to this Board for appropriate action pursuant to 43 CFR 4.242(h) as the Secretary is not bound by the limitations of 43 CFR 4.242 and he may at any time review and reopen estates on proper grounds.

Susan Brouillette, the petitioner herein, in her petition alleges that due to a misunderstanding at a hearing held at Juneau, Alaska, on March 6, 1967, Juanita Smith was erroneously found to be an heir of Henry Max Brouillette in that the said Juanita Smith was actually a stepdaughter of Henry Max Brouillette and not a daughter. Accordingly, the petitioner requests that the estate be reopened for the purpose of excluding Juanita Smith as an heir in Henry Max Brouillette's estate.

The Administrative Law Judge, having probate jurisdiction over the estate, recommends that the petition be granted to reopen the

matter. It would appear that in order to correct and prevent the continuation of a manifest injustice, the petition to reopen should be granted and the matter remanded to the Administrative Law Judge for further proceedings.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition to reopen filed by Susan Brouillette is hereby GRANTED and the matter is hereby REMANDED to the Administrative Law Judge for such proceedings he deems necessary and appropriate in the matter and for the issuance of an order or decision in connection therewith.

Alexander H. Wilson
Administrative Judge

I concur:

Mitchell J. Sabagh
Administrative Judge

United States Department of the Interior
Office of Hearings and Appeals

Petition of)
SUSAN BROUILLETTE) REOPENING OF PROBATE
)
)

Comes now Susan Brouillette, by and through her attorneys, Alaska Legal Services and alleges as follows:

1. That Harry Max Brouillette of the Tlingit Indian race in the state of Alaska died intestate on May 23, 1965 at the age of 52 years, and
2. A hearing was held at Juneau, Alaska on March 6, 1967 for the purpose of ascertaining the heirs of said decedent, and
3. Mrs. Susan Brouillette, spouse of the decedent, was requested to list the names of Harry Max Brouillette's heirs. Susan Brouillette included the name of Juanita Brouillette Smith as an heir of the decedent. Juanita Smith is not an heir of Mr. Henry Max Brouillette in that she was the daughter of the ex-wife of the decedent, born prior to the decedent's and his ex-wife's marriage and the decedent not being the father of said child.
4. Petitioner did not understand the significance or meaning of declaring that Juanita Smith was an heir of the decedent.

DATED this 14 day of April, 1975.

Susan Brouillette

I, Susan Brouillette, do hereby swear that the foregoing petition is true to the best of my knowledge.

DATED this 14 day of April, 1975.

Susan Brouillette

SUBSCRIBED AND SWORN to before me this 14 day of April, 1975.

Notary Public, State of Alaska
My commission expires: 11/7/78